HR-77-049-PE,

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by William L. Wilson,
Commissioner, Department of Human Rights,

Complainant,

V. ORDER

St. Joseph's Hospital,

Respondent.

The above-entitled matter was initially scheduled to be heard by Hearing

Examiner Peter C. Erickson of the State Office of Administrative Hearings on

May 19, 1977. The matter was indefinitely continued, however, and since that

time, various interlocutory orders have been issued and the parties have at-

tempted to settle all issues in dispute. Representing the Complainant in this

matter is Carl M. Warren, Special Assistant Attoney General, 1100 Bremer

Tpwer, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101. Repre-

senting the Respondent are James M.. Dawson and Judith G. Menadue, from the

firm of Felhaber, Larson, Fenlon & Vogt, Attorneys at law, W-1080 First

National Bank Building, St. Paul, Minnesota 55101. (Ai Aug us t 2 5, 19 8 3, Re -

spondent. f iled a Memorandum arguing' that the tentative settlement agreement

reached in this matter should be set aside because ERISA preempts the appli-

cation of the Minnesota Human Rights Act herein. Responsive memoranda were

filed through November 24, 1983.

-PROCEDURAL HISTORY

1.. Oa February 22, 1977, the Minnesota Department of Human Rights issued

comolaint in this matter alleging discrimination in violation of Minn. Stat.
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S 363.03, subd. 1(2) (c) (1974) on behalf of a Charging Party and a class of

similarly situated individuals. This Complaint resulted from a charge of dis-

crimination filed on April 8, 1974. An Answer to the Complaint was served by

the Repondent on April 21, 1977.

2. On January 23, 1978, an Amended Complaint was issued by the Department

of Human Rights and an Amended Answer and Second Amended Answer were served by

Respondent on January 27, 1978 and February 8, 1978, respectively. The Second

amended Answer specifically raised as an affirmative defense that the Employee

Retirement Income Security Act of 1974, 29 U.S.C. 1001 et seg. (ERISA) ,

pre-empts the Minnesota Human Rights Act in this action.

3. By Order dated March 30, 1978, this matter was conditionally certified

a class action by the Hearing Examiner.

4. (Ai September 25, 1978, Respondent filed a Motion for Summary Judgment

alleging ERISA preemption.

By Order dated September 19, 1979, the Hearing Examiner an-ended the

Order for Class Certification by limiting the period for inclusion in

pursuant to the holding in Minn. Mining & Mfq. Co. v. State of Minn

nesota., 289 N.W. 2d 396 (Minn. 1979) (hereinafter "3M") . 3M additionally held

6. After 3M was decided, Resspondent instituted an action against the Department of Human Rights in Federal District Court which sought declaratory relief on the ground of ERISA pre-emption. However, in early 1980, after the United States Supreme Court had dismissed the 3M appeal for lack of any substantial federal question, the Federal District Court action was dismissed.

7. By way of art Interlocutory Order dated June 17, 1980, the Hearing Examiner denied Respondent's Motion for Summary Judgment which had been based upon ERISA pre-emption.

8. During the pendency of this action, a factually identical matter was also being heard by Hearing Examiner Peter Erickson which involved the same attorneys, the same Complainant, but different Respondents. State v. United Hospitals, Inc. -- St. Luke's Division, HR-78-030-PE (decision issued May 12, 1981). Resolution of the St. Joseph's Hospitals case was postponed pending the outcome of United Hospitals, which was decided on identical facts. In the decision cited above, the Hearing Examiner found a discriminatory practice and liability on the part of the Respondent. The United Hospitals case was finally resolved by way of a settlement agreement dated November 15, 1982, and an Order from the Hearing examiner approving that agreement, dated March 25, 1983.

9. Using tie United Hospitals Settlement Agreement as a model, the parties herein attempted to resolve this matter. In early May of 1983, settlement terms were orally agreed to by the parties. An agreement was then drafted and signed by, the Charging Party on may, 27, 1983; the Commissioner of Human Rights on June 16, 1983; and Respondent on July 18, 1983. As part of the Settlement Agreement, Respondent agreed to notify all class members of the settlement and the date of a hearing at which time both parties would request the Hearing Examiner to approve the Agreement. Such a notice was sent to the class remembers. The hearing was scheduled for September 16, 1983.

10. On the same day that Respondent executed the Settlement Agreement, -its counsel, James Dawson, first became aware of the recent United States

Supreme Court decision in Shaw v. Delta Air Lines, 103 S.Ct. 2890 (1983),
which was filed on June 24, 1983. In Shaw, the Court reversed its earlier 3M
decision on the pre-emption issue and concluded that ERISA did pre-empt state
anti-discrimination laws to the extent that those laws exceed the scope of
Title VII of the Civil Rights Act of 1964.

11. The following day, July 19, 1983, Mr. Dawson telephoned Carl Warren,
Complainant's counsel, to advise him of the recently discovered holding of the
United States Supreme Court. Warren was not in on that day, but later in the
week, returned Dawson's call. At that time, and to the present, Complainant
takes the position that the executed Settlement Agreement is a binding and
enforceable contract regardless of the impact of Shaw on the merits herein.
respondent's position is that no final agreement had been entered into and
that the ERISA pre-emption issue should be litigated; or in the alternative,
that the Settlement Agreement should be set on the basis of the Shaw
decision.

12. On September 16, 1983, the "Settlement Approval" hearing was held as
to all class members. Respondent appeared at this hearing with the
that it was not waiving any rights to litigate the pre-emption issue
of contest the validity of the Settlement Agreement.

Based upon all of the proceedings herein and for the reasons set forth in the Memorandwn below, the Hearing Examiner makes the following:

ORDER

IT IS HEREBY ORDERED that Respondent's Motion to withdraw from or rescind the executed Settlement Agreement herein is granted, except as that Agreement pertains to the Charging Party.

Dated this 22day of December, 1983.

PETER C. ERICKSON
Hearing Examiner

Respondent first argues that the settlement agreement executed by both

parties nets not a final agreement because it had not been approved by the

Hearing Examiner pursuant to HumRts 107(i), which reads:

> (i) A class action shall not be dismissed or compromised without the approval of the panel or hearing examiner. Notice of the proposed dismissal or compromise shall be given to all members of the class in such a manner as the panel or hearing examiner directs.

Because this approval had not occurred prior to the motion to withdraw, Respondent contends that there was no final -agreement and withdrawal from the agreement by Respondent is appropriate.

The settlement agreement in this matter constitutes a complete resolution of all issues in dispute. Agreement, Page 1- Respondent has agreed, as part of the settlement, to request the Hearing Examiner to approve the settlement agreement and after any issues of appropriate relief have been resolved, to request the Hearing Examiner to dismiss this matter with prejudice. Agreement, Pages 8 and 11. Respondent sent letters to all class members informing them of the terms of the settlement and that objections to those terms would be heard at the hearing scheduled for September 16, 1983.

The record shows that both Complainant and Respondent had completely finished all negotiations regarding the terms of settlement. All that remained was for the Hearing Examiner to hear and rule on any objections raised by class members and 'approve" the agreement. Although these remaining actions by the Bearing Examiner are essential to conclude the settlement process, they do not affect the basis of the agreement or result in a re-opening of negotiations. Consequently, the Hearing Examiner concludes that a final settlement agreement was executed in this matter The language of the agreement is clear that that was the intent of both parties.

Cbmplainant contends that a binding contract was entered into by both parties when terms were orally agreed to in May of 1983. However, it was the obvious intent that the agreement be reduced to writing and executed by all partins before it would become effective. Before that execution occurred, the examiner concludes that no binding agreement existed.

Respondent argues two grounds for rescission of the agreement. First, that the effect of Shaw is to absolve Respondent of any liability so the settlement agreement lacks consideration. Second, that the agreement should be rescinded because of Respondent's mistaken belief that liability existed when there was none. Both of these arguments hinge on the holding in Shaw. Although Respondent contends that the settlement agreement should first be vacated and then the Federal pre-emption question argued, and Complainant has stated that the Shaw holding is irrevelant to this motion, the Hearing examiner considers the effect on Shaw on the merits of this matter to be critical to the issues raised herein.

In Shaw v. Delta Air Lines, 103 S.Ct. 2890 (1983), the United States Supreme Court held that ERISA did pre-empt state anti-discrimination laws to the extent that those laws exceed the scope of Title VII of the Civil Rights Act of 1964. Although the facts in this case have not been litigated, it is clear that this action is based upon an interpretation and provision of chapter 363 which go beyond the law found in Title VII. See, 3M, supra; Minn. Stat. sec. 363.01, subd. 1(5) (1978) .1 nsequently, the effect of Shaw on the merits of this case is to absolve Respondent of all liability regarding the class members if the benefit plan herein is covered by ERISA. That issue, ERISA coverage, has not been litigated.2

!Respondent. executed the settlement agreement in this matter on July 18, 1983, approximately three weeks after Shaw was issued. Respondent states that it was not aware of the Supreme Court decision until after the agreement was signed. Because of this "mistake', Respondent argues that the agreement should be rescinded, citing Rile 60.'02 of the Minnesota Rules of Civil Procedure, which reads:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment (other than a divorce decree) , order, or proceeding and may order a new trial or grant such other relief as may be just for the following reason: (1) Mistake, inadvertence, surprise or excusable neglect; . . . 3

As a general rule, the settlement of legal disputes without litigation is highly favored by the Courts and such settlements will not be lightly set aside. Schmidt v. Smith, 299 Minn. 103, 216 N.W.2d 669 (1974) ; Johnson v. St. Paul Insurance Company, 305 N.W.2d 571 (Minn. 1981). The party seeking to avoid a settlement must show sufficient grounds for its vacation. Schoenfeld v. Buker, 262 Minn. 122, 114 N.W.2d 560 (1962). The Minnesota Supreme Court has held that even a unilateral mistake of law may constitue grounds to set

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I Ile federal law as amended, effective April 29, 1979, to read the same as the Minn. Stat. Ch. 363, thus resolving the pre-emption issue in Minnesota.

2 beause the cnarging Party's cause for action arose prior to the enactment of ERISA, her claim is not barred by pre-emption.

2. Although the rules of Procedure for the Office of Administrative hearings do not have an analogous provision, the Rules of Civil Procedure are incorporated by reference, to the extent the Hearing Examiner deems it appropriate 'to promote a fair and expeditious hearing'. 9 MCAR sec. 2.213B.

aside a settlement agreement. Peterson v. First National Bank, 162 Minn. 369, 203 N.W. 53 (1925). however, if the mistake'is unilateral, there must be concealment, or at least knowledge that the mistake exists on the part of the other party. Schoenfeld, supra.

Complainant argues that if there was a mistake, it was unilateral and not mutual, and thus should not constitute grounds for rescission of the settlement agreement. This argument leads the Hearing examiner to conclude that Complainant was aware of the Shaw decision prior to Respondent's execution of the agreement. Shaw did not leave any doubt that Respondent's liability re-



garding class members had been absolved. Consequently, Complainant knew that its bargaining position had largely evaporated as a result of Shaw.

There has been no performance of any provision of the settlement agreement by Respondent, except for the notification of class members as to the terms of settlement. No payments have been made and Complainant has not argued that there has been a change of position attributable to the executed agreement herein. Me issue of liability had been clearly reversed by the United States Supreme Court before the settlement agreement was executed by all parties. The Hearing Examiner concludes that the mistaken belief by Respondent that it was liable to a class of claimants and Complainant's knowledge of this mistake is; sufficient reason to vacate the settlement agreement. See, Schoenfield, supra. No one will be injured by the rescission and a windfall to the class members will be avoided.

P.C.E.

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4 this conclusion assumes that Respondent's benefit plan is covered by

ERISA, a fact which is critical'to this analysis. If that assumption is later to be mistaken, this Order will be amended upon proper motion by Com-plainant. However, in both this case and United Hospitals, ERISA applic-Utility has never been questioned.